

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 2019-103-00235C

Parcel No. N0735-01C

Kandila, LLC,

Appellant,

vs.

City of Davenport Board of Review,

Appellee.

Introduction

The appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on June 15, 2020. Jeff Heuer, a broker associate with NAI Ruhl Commercial Company, represented Kandila, LLC. Attorney Theodore Craig represented the City of Davenport Board of Review.

Kandila, LLC (Kandila) owns a commercial property located at 2175 E 53rd Street, Davenport, Iowa. Its January 1, 2019, assessment was set at \$860,970, allocated as \$198,110 in land value and \$662,860 in building value. (Ex. A).

Kandila petitioned the Board of Review contending the assessment was not equitable as compared with assessments of other like property and that it was assessed for more than the value authorized by law. Iowa Code § 441.37(1)(a)(1 & 2) (2019). (Ex. C). The Board of Review denied the petition. (Ex. B).

Kandila then appealed to PAAB re-asserting its claims and also claiming there was an error in the assessment. § 441.37(1)(a)(1, 2, & 4) (2019).

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. PAAB is an agency and the provisions of the Administrative Procedure Act apply. § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code R. 701-126.2(2-4). New or additional evidence may be introduced. *Id.* PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct, but the taxpayer has the burden of proof. §§ 441.21(3); 441.37A(3)(a). The burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Compiano v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 396 (Iowa 2009) (citation omitted).

Findings of Fact

The subject property is assessed as a two-story, neighborhood shopping center. It was built in 1995 and has a brick veneer. It is listed as having a 4100 square-foot base and a gross building area of 8200 square feet. The improvements are listed in normal condition with a 3+00 Grade (good quality). The 1.005-acre site is also improved with 8800 square feet of asphalt paving. (Ex. A). There are four tenants in the subject property, two on the upper level and two on the lower level.

Jeff Heuer testified on behalf of Kandila. He has extensive commercial real estate experience in Davenport. Heuer described E 53rd Street as an east/west arterial road. While the subject property has frontage on and has a mailing address of E 53rd Street, it is actually on the corner of E 53rd Street and E 52nd Street and is located west of Elmore Avenue. The only access to the improvements is from E 52nd Street.

Heuer asserts the usable portion of the subject site is roughly 0.75 acres and the remaining portion of the site is in a flood plain. The Assessor has valued the usable

portion of the subject site at \$6.00 per square foot with the remaining site assessed at \$0.01 per square foot. (Ex. A, p. 1). The total assessed site value is \$198,110.

Christina Conley is a Commercial Appraiser with the City of Davenport Assessor's Office and testified for the Board of Review. She confirmed the west side of the subject site is in a flood plain and this was recognized by giving it a nominal value of \$0.01 per square foot.

The Board of Review submitted three properties in close proximity to demonstrate the subject's assessed land value was equitable and assessed at its fair market value, which are summarized in the following table. (Ex. F, p. 3). These properties were sold unimproved and were developed post-sale.

Comparable	Site Size (SF)	Date of Sale	Sale Price	Sale Price/SF	Assessed Land Value	Land AV/SF
Subject - 2175 E 53rd St	43,760	-	-	-	\$198,110	\$4.53
1 - 505 E 53rd St	49,658	Dec-18	\$325,000	\$6.54	\$60	\$0.00
2 - 1777 E 53rd St	553,604	Jun-18	\$4,381,379	\$7.91	\$2,722,490	\$4.92
3 - 2050 E 53rd St	78,880	Apr-17	\$425,000	\$5.39	\$473,280	\$6.00

Heuer believes the Assessor's Office incorrectly identified the assessed land value of the subject property in this analysis. He believes the reported assessed land value of the subject property of \$4.53 per square foot is in error because it included the total site area and not just the usable area. We note the assessed unit price of the usable portion of the subject site is \$6.00 per square foot and is consistent with the sales price per square foot of the comparables.¹

Heuer testified he was involved with the sale of Comparable 1 and the transaction included two parcels. The second parcel of this transaction included another

¹ We note that unimproved land sales may require infrastructure/utility installation and landscaping before they can be improved. "For assessment purposes the land value conclusions should be for sites that are improved." IOWA REAL PROPERTY APPRAISAL MANUAL 2-4. Thus, while we believe the unimproved land sales generally support the subject's assessed land value, we recognize it is not entirely an apples-to-apples comparison.

25,265 square feet for a total site size of 74,923 square feet. Considering both parcels, the sale price of Comparable 1 was \$4.38 per square foot. Conley agreed with Heuer that this was a multi-parcel sale. (Ex. F, p. 3). Conley also testified that this property's classification has not yet changed and it had an agricultural classification for 2019. This explains why its 2019 assessed land value was only \$60. Exhibit F states the subject is located "closer to new development" than this comparable.

Heuer described Comparable 2 as being a 12+-acre site located on a "hard corner" of two arterial roads: Eastern Avenue and E 53rd Street. Because of the size of this property, as well as its superior location on the corner of two arterial roads, Heuer does not believe it is comparable to the subject property.

Lastly, Heuer reported Comparable 3 is improved with a convenience store and is a level site compared to the subject property's site that is not flat and has one-quarter of the site in an unusable flood plain. Based on its address, we note this comparable is located closest to the subject and has an assessed land value of \$6.00 per square foot, which is the same unit price as the usable portion of the subject property's site.

Heuer does not believe the subject property's assessed site value is correct at \$6.00 per square foot. Heuer asserts the correct total value of the subject site is \$188,870; or \$4.31 per square foot. (Ex. 3). He did not submit any evidence, such as comparable land sales, to support how he arrived at this opinion.

Heuer asserts the subject building is incorrectly listed as a two-story with no basement and is also incorrectly identified as a neighborhood shopping center. (Ex. A, pp. 2-3). In Heuer's opinion, the upper level of the subject property facing E 53rd Street is clearly a one-story building; and the lower level is a walk-out basement. (Ex. E, p. 4). He testified both levels of the subject property are entirely finished. He believes traditional retail centers are typically one-level and the correct description for the subject property is a small retail store.

Conley agreed with Heuer that typically a neighborhood shopping center looks like a traditional one-story strip mall but that there are investors who choose to build property in a less conventional manner. Despite the subject property's unconventional design, it is used for the same purpose as a traditionally designed shopping center.

Moreover, the Assessor's Office identifies similar commercial property with more than two tenants as a neighborhood shopping retail center. Properties with one or two tenants are identified and priced as small retail properties.

Photographs of the property show the front of the building appears to be a single story with a pitched roof and dormers, a canopy, separate entrances for the upper level units, and customer parking. (Ex. E). A photograph of the rear of the building shows it has less fenestration than the front, but has separate entrances for the lower level units and customer parking. Further, the photograph also shows the sides and rear of the building are two-stories and fully or almost fully exposed.

The Assessor identified the subject as a neighborhood shopping center and valued the improvements as a two-story building with no basement. (Ex. A, p. 2-3). The assessment assigned the first floor of the building a unit price of \$74.70 per square foot, or \$306,270 cost new; and the uppers (second floor) a unit price of \$61.30 per square foot, or \$251,330 cost new. The total cost new is \$557,600. (Ex. A).

In his written evidence submitted prior to the PAAB hearing, Heuer asserts the subject should have been valued based on the "7,500" portion of the chart. (Ex 4, p. 1). Based on this, he believes the upper level value is \$66.20 per square foot and the lower level should be \$53.10 per square foot, or \$489,130. (Ex. 4, p 1). Heuer also asserts the assessment incorrectly depreciates the improvements. (Ex. 4, p.1).

Heuer created a spreadsheet accounting for the aforementioned errors he asserts exist in the assessment. (Ex. 3). Based on this analysis, he asserts the correct value of the subject improvements is \$516,371. Heuer noted the assessment does not have any obsolescence on the subject property and he included a 5% functional obsolescence. Based on this analysis, Heuer believes the correct total value of the subject property is \$705,241. (Ex. 3).

During his testimony at the PAAB hearing, Heuer additionally asserted the subject property is incorrectly identified and valued as a neighborhood shopping center as allowed for in the 2008 IOWA REAL PROPERTY APPRAISAL MANUAL pp. 6-30 & 31.² He

² In general, we find that Heuer was not correctly reading or applying the MANUAL and find his application of the MANUAL to value the subject is not reliable. For instance, his testimony suggested he believed the

believes the correct identification and value of the subject property should be as a small retail store. (Ex. F). Based on this, he believes the main level should be valued at \$61.90 per square foot (\$253,790 cost new); and the walk-out basement should be valued between \$20 and \$30 per square foot (\$82,000 to \$123,000 cost new).

We note Heuer appears to be confusing basement area and basement finish. Without agreeing to his description, we note that if the subject property were to be assessed as a small retail store with a basement, the base cost would be \$71.90 per square foot for the main level and then additional adjustments would be made both for basement area and basement finish.³

Kandila did not specifically identify its equity comparables. It only submitted assessment information for one property located at 4425 Wecome Way. (Ex. 7). This property has a much smaller site than the subject, significantly less gross building area than the subject, and has not recently sold.

Conversely, the Board of Review submitted an equity comparable of a similar style building to the subject property. (Ex. F, p. 2). The subject and this comparable are described in the following table.

Comparable	Site Size (SF)	Building Size (SF)	Assessed Land Value	Assessed Building Value	Land AV/SF	Building AV/SF	Total AV/SF
Subject	43,760	8200	\$198,110	\$662,860	\$4.53	\$80.84	\$105.00
2303 E 53rd St	28,348	5520	\$153,080	\$383,300	\$5.40	\$69.44	\$97.17

The subject and 2303 E 53rd Street were built in 1995 and 1994 respectively and are similar buildings with two levels and listed without a basement. Both have a 3+00

subject could not be considered a neighborhood shopping center because MANUAL p. 6-30 describes general specifications of neighborhood shopping centers and states, "Basement: No basement is base." This statement does not mean a property with a basement cannot be valued as a neighborhood shopping center. Rather, it means that when valuing a neighborhood shopping center with a basement, a separate adjustment must be made. Adjustments for basement area and basement finish for a neighborhood shopping center are provided on MANUAL p. 6-31.

³ This sentence is only meant to illustrate that Heuer is misapplying the basement and basement finish adjustments from the MANUAL. It is not meant to indicate PAAB's opinion about the correct valuation of the subject building. We specifically note additional adjustments may be necessary if the property were valued as having a walk-out basement.

grade and are in normal condition. 2303 E 53rd Street is located two blocks east of the subject property, albeit on a smaller site.

Heuer testified 2303 E 53rd Street “is an excellent comparable.” But he believes it is a better location with access to the arterial road (E 53rd Street) and it has a better more stable tenant mix with longer leases; yet its improvements are assessed for roughly \$11.00 per square foot less.

Conley testified the Board of Review lowered the 2019 assessed value of 2303 E 53rd Street. Even though she disagreed with the Board of Review’s decision, she notes the assessed value is still very similar to the subject’s assessed value. She believes this property demonstrates that similar properties are assessed with similar methodology.

Heuer submitted listing sheets and a Beacon sheet for properties located in Davenport that sold between 2012 and 2019. (Exs. 5-7). Heuer divided the City of Davenport using Brady Street as the demarcation. (Ex. 4). Property that sold on the east side of Brady Street had sale prices between \$247,000 to \$2,400,000, with a median of \$785,000. (Ex. 5). Properties that sold on the west side of Davenport had sale prices ranging from \$59,000 to \$1,200,000, with a median of \$207,500. (Ex. 6). Heuer also reported rents on the west side were lower than rents on the east side. (Ex. 4).

Heuer did not select any of the properties that sold for direct comparison to the subject, nor did he adjust them for any differences to establish a market value for the subject property as of January 1, 2019. The properties vary in age, size, and design when compared to the subject and we find adjustments would be necessary to extrapolate a value opinion for the subject. Moreover, there is limited information about the sales and we are unable to make any findings about whether the sales are normal under Iowa Code section 441.21(1).

Heuer reported the subject property’s “owner keeps the rents under market rate to keep vacancy low. All lease lengths are short but risk is lower as a result of low rents.” (Ex. 4). Relying on the actual income, he developed a net operating income (NOI) of \$76,588. Heuer asserts that relying on the actual rents is acceptable because

he did not take any vacancy. If he were to consider higher rents then the accounting for vacancy would result in a similar NOI as he considered in his analysis.

Heuer capitalized the NOI at 11% to conclude his opinion of the present value of the subject property as \$696,254. (Ex. 4). The capitalization rate did not include real estate taxes. He testified his capitalization rate takes into consideration the location of the subject property as well as the quality of the current tenants.

The Board of Review submitted three comparable properties to support its belief the subject property is assessed at market value. (Ex. F, p. 1). The following table is a summary of the sales.

Comparable	Site Size (SF)	Building Size (SF)	Total Assessed Value	Sale Date	Sale Price	AV/SF	SP/SF	AV/SP Ratio
Subject	43,760	8200	\$662,860			\$105.00		
A - 1430 E 52nd St	88,551	11,096	\$1,151,710	Apr-18	\$1,250,000	\$103.80	\$112.65	0.92
B - 1432 W Locust St	29,621	6000	\$869,390	Jul-17	\$918,000	\$144.90	\$153.00	0.95
C - 1143 E Locust St	37,200	7310	\$727,660	Mar-19	\$745,000	\$99.54	\$101.92	0.98

All three comparables are one-story buildings compared to the subject's two-story description, and were built in 2007, 2004, and 1989 respectively. Although the Board of Review did not adjust the comparables for differences between them and the subject property, the assessed value to sale price ratios suggest they are all assessed for slightly less than actual market value. Moreover, the subject's assessed value per square foot is consistent with or less than the comparables' sales price per square foot.

Conley testified the three sales demonstrate the subject property is fairly assessed.

Conley testified Comparable A includes a Kosoma gym and the remaining portion of the improvement was vacant when it sold in April 2018. It sold again in 2019 for \$120.91 per square foot after it was fit out for a restaurant. (Ex. F, p. 1). Conley explained that at the time Comparable A was built, it had three store fronts and was therefore identified and priced as a neighborhood shopping center like the subject property. (Ex. G, pp. 1-7). She stated that if the restaurant takes over two of the units

and there are only two tenants moving forward, the occupancy and pricing of the property will be re-evaluated and changed to be consistent with the pricing of other commercial property in Davenport.

Heuer testified that in his opinion Comparables A and B have superior tenants and better locations. He testified Comparable C has a comparable tenant but is superior because it is a one-level property compared to the subject's two-level design. We note that other than design, Comparable C appears to be the most similar to the subject but its building is still roughly 1000-square-feet smaller and six-years older. (Ex. G, pp. 47-54). Conley testified Comparable C is the most recent sale of a neighborhood shopping center in Davenport.

Analysis & Conclusions of Law

Kandila contends the subject property is inequitably assessed, over assessed, and there is an error in the assessment as provided under Iowa Code section 441.37(1)(a)(1, 2 & 4).

Error Claim

On Kandila's behalf, Heuer asserts there was an error in the assessment. An error may include, but is not limited to, listing errors or erroneous mathematical calculations. Iowa Admin. Code R. 701-71.20(4)(b)(4).

Citing the IOWA REAL PROPERTY APPRAISAL MANUAL, Heuer believes the subject property is incorrectly identified as a two-story building with no basement, when it is actually a one-story building with a finished basement. Additionally, he believes it is incorrectly priced as a neighborhood shopping center when it should be priced as a small retail property. See 2008 IOWA REAL PROPERTY APPRAISAL MANUAL, *available at* https://paab.iowa.gov/sites/default/files/documents/2020/01/6precomputedsection_part1.pdf

The MANUAL describes a small retail store as a "small store building....It is a typical strip commercial or downtown store." MANUAL 6-3. Conversely, it describes neighborhood shopping centers as "small to medium size shopping centers having row-

type retail outlets.” MANUAL 6-30. Heuer believes the subject is not a row-type style property and therefore cannot be considered a neighborhood shopping center.

The Board of Review provided testimony that identification and pricing of the property is based on tenancy. Properties like the subject, with more than two tenants, are priced as neighborhood shopping centers. Properties with one or two tenants are priced as small retail property. The record indicates this distinction has been uniformly applied.

Kandila also asserts the decision to value the property as a two-story with no basement rather than a one-story with a finished basement is an error in the assessment. Here, we find the property could reasonably be described and valued under either scenario. But the Assessor’s office has been consistent in valuing similarly constructed property in a uniform manner.

The descriptors - small retail vs. neighborhood shopping center or two-story vs. one-story with basement - are only important inasmuch as they determine a cost schedule to be used in arriving at a value opinion for the subject property using the MANUAL. In the absence of reliable evidence the subject’s assessment is excessive, we are not inclined to conclude the Assessor’s identification and pricing of the subject as a two-story neighborhood shopping center is an error. Thus, we examine the remaining evidence and claims to determine whether Kandila has shown the assessment is inequitable or excessive.

Inequity Claim

Under section 441.37(1)(a)(1), a taxpayer may claim that their property is inequitably assessed when compared to other like properties in the taxing district. More than one comparable property located in the subject’s assessing district is an evidentiary requirement for an inequity claim. *Maytag Co. v. Partridge*, 210 N.W.2d 584, 594-95 (Iowa 1973) (deciding that for the equity claim in section 441.37, comparable properties must be located in the same assessing jurisdiction as the subject); *Miller v. Property Assessment Appeal Bd.*, 2019 WL 3714977 *4 (Iowa Ct. App. 2019).

We initially note that Kandila failed to identify its equity comparables, making an analysis of this claim difficult. Kandila only provided assessment information for one property - 4425 Wecome Way. (Ex. 7).

To prove inequity, a taxpayer may show an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Here, we find Kandila failed to demonstrate the Assessor applied an assessing method in a non-uniform manner. Kandila failed to identify more than one equity comparable and show that an assessing method was being applied in a non-uniform manner.

Alternatively, to prove inequity, a taxpayer may show the property is assessed higher proportionately than other like properties using criteria set forth in *Maxwell v. Shivers*, 133 N.W.2d 709, 711 (Iowa 1965). The *Maxwell* test provides that inequity exists when the subject property is assessed at a higher proportion of its actual value. *Id.* This is typically demonstrated by comparing prior year (2018) sales with the current (2019) assessment of the subject and comparable properties.

4425 Wecome Way is the only property Kandila submitted with information about its assessed value. (Ex. 7). First, we find this property is not sufficiently like the subject to be used in an equity analysis. That property has also not recently sold and therefore cannot be used for a *Maxwell* analysis. Lastly, because the *Maxwell* analysis requires a showing of the subject property's actual market value and an over assessment claim requires the same showing, we therefore turn to the overassessment claim.

Over Assessment Claim

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 780 (Iowa 2009) (citation omitted). In protest or appeal proceedings when the complainant offers competent evidence that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold such valuation. Iowa Code § 441.21(3)(b)(2) (2019). To be competent evidence, it must

“comply with the statutory scheme for property valuation for tax assessment purposes.” *Soifer*, 759 N.W.2d at 782 (citations omitted).

Under the statutory scheme, sales prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. § 441.21(1)(b). Sale prices of property in abnormal transactions not reflecting market value shall not be taken into account or shall be adjusted to account for market distortion. *Id.* Other factors and approaches to value, such as cost and income, can only be considered upon a showing that sales cannot readily establish the subject’s actual value. § 441.21(2).

Kandila submitted multiple sales but the impetus for the sales evidence was to demonstrate differences in location within the City of Davenport. The sales range wildly in price and the differences in the improvements are vast between them and the subject property. Kandila did not select the best comparable properties from its own evidence and did not adjust any sales for differences to arrive at an opinion of value as of January 1, 2019. *Soifer*, 759 N.W.2d at 783 (“When sales of other properties are admitted, the market value of the assessed property must be adjusted to account for differences between the comparable property and the assessed property to the extent any differences would distort the market value of the assessed property in the absence of such adjustments.”). Moreover, we find the data regarding the sales is generally insufficient to determine whether the sales were normal for use under section 441.21(1). For these reasons, we find the burden of proof has not been shifted under section 441.21(3) and this sales evidence does not persuade us the subject’s assessment is excessive.

The Board of Review submitted three recent sales. They are identified as normal sales and, although also unadjusted, their sales price per square foot are consistent with the subject’s assessment on a per-square-foot basis. These sales also show those properties are being assessed for slightly less than their actual market value.

Kandila submitted an income analysis but relied solely on the actual income which was identified as being less than market value. *Merle Hay Mall v. City of Des Moines Bd. of Review*, 564 N.W.2d 419, 423 (Iowa 1997) (“The assessor properly used

the objective rental income value of the Younkers store, rather than the actual lease amount, to establish a valuation...). For this reason and because we find Kandila has not demonstrated the subject's value cannot be readily established by sales, we give this income analysis no consideration.

Lastly, Kandila raised concerns about the subject's land value. Despite Kandila's concerns regarding the land value, Iowa Courts have concluded the "ultimate issue...[is] whether the *total* values affixed by the assessment roll were excessive or inequitable." *Deere Manufacturing Co. v. Zeiner*, 78 N.W. 2d 527,530 (Iowa 1956); *White v. Bd. of Review of Dallas County*, 244 N.W. 2d 765 (Iowa 1976)(emphasis added). Further, although Kandila raised concerns about Board of Review comparables, it did not offer any land value evidence of its own. The Board of Review's comparables support the unit price the Assessor applied to the usable portion of the subject site. For these reasons, we find the subject's land value is neither in error nor excessive.

Viewing the record as a whole, we find Kandila has failed to support its claims. Kandila has not shown there is an error in the assessment, that the subject's assessment is inequitable, or that the subject is overassessed.

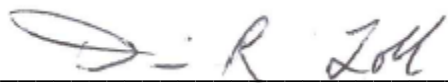
Order

PAAB HEREBY AFFIRMS the City of Davenport's Board of Review's action.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A.

Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action.

Any judicial action challenging this Order shall be filed in the district court where the property is located within 30 days of the date of this Order and comply with the requirements of Iowa Code section 441.37B and Chapter 17A (2019).



Dennis Loll, Board Member



Elizabeth Goodman, Board Member



Karen Oberman, Board Member

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